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PERFORMANCE ASSURANCE PLAN

1.0 Introduction

1.1 As set forth in this Agreement, Qwest and CLEC voluntarily agree to the terms of the following Performance Assurance Plan ("PAP"), prepared in conjunction with Qwest's application for approval under Section 271 of the Telecommunications Act of 1996 (the "Act") to offer in-region long distance service.

2.0 Plan Structure

2.1 The PAP is a two-tiered, self-executing remedy plan. CLEC shall be provided with Tier 1 payments if, as applicable, Qwest does not provide parity between the service it provides to CLEC and that which it provides to its own retail customers, or Qwest fails to meet applicable benchmarks.

2.1.1 As specified in section 7.0, if Qwest fails to meet parity and benchmark standards on an aggregate CLEC basis, Qwest shall make Tier 2 payments to a Fund established by the state regulatory commission or, if required by existing law, to the state general fund.

2.2 As specified in sections 6.0 and 7.0 and Attachments 1 and 2, payment is generally on a per occurrence basis, (i.e., a set dollar payment times the number of non-conforming service events). For the performance measurements which do not lend themselves to per occurrence payment, payment is on a per measurement basis, (i.e., a set dollar payment). The level of payment also depends upon the number of consecutive months of non-conforming performance, (i.e., an escalating payment the longer the duration of non-conforming performance).

2.3 Qwest shall be in conformance with the parity standard when service Qwest provides to CLEC is equivalent to that which it provides to its retail customers. The PAP relies upon statistical scoring to determine whether any difference between CLEC and Qwest performance results is significant, that is, not attributable to simple random variation. Statistical parity shall exist when performance results for CLEC and for Qwest retail analogue result in a z-value that is no greater than the critical z-values listed in the Critical Z-Statistical Table in section 5.0

2.4 For performance measurements that have no Qwest retail analogue, agreed upon benchmarks shall be used. Benchmarks shall be evaluated using a "stare and compare" method. For example, if the benchmark is for a particular performance measurement is 95% or better, Qwest performance results must be at least 95% to meet the benchmark. Percentage benchmarks will be adjusted to round the allowable number of misses up or down to the closest integer, except when the sample size is 5 or less in which case the rounding will be up to the nearest integer.

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For example, for a 90% benchmark, the number of allowable misses is 10% times the sample size, rounded to the nearest integer. If the sample size is eight observations, (10% multiplied by 8 = 0.8) is rounded to 1, one miss would be permitted, and the effective benchmark would be 88% (1 minus 1/8).

3.0 Performance Measurements

3.1 The performance measurements included in the PAP are set forth in Attachment 1. Each performance measurement identified is defined in the Performance Indicator Definitions ("PIDs") developed in the ROC Operational Support System ("OSS") collaborative, and which are included in the SGAT at Exhibit B. The measurements have been designated as Tier 1, Tier 2, or both Tier 1 and Tier 2 and given a High, Medium, or Low designation.

4.0 Statistical Measurement

4.1 Qwest uses a statistical test, namely the modified "z-test," for evaluating the difference between two means (i.e., Qwest and CLEC service or repair intervals) or two percentages (e.g., Qwest and CLEC proportions), to determine whether a parity condition exists between the results for Qwest and the CLEC(s). The modified z-tests shall be applicable if the number of data points are greater than 30 for a given measurement. For testing measurements for which the number of data points are 30 or less, Qwest will use a permutation test to determine the statistical significance of the difference between Qwest and CLEC.

4.2 Qwest shall be in conformance when the monthly performance results for parity measurements (whether in the form of means, percents, or proportions and at the equivalent level of disaggregation) are such that the calculated z-test statistics are not greater than the critical z-values as listed in Table 1, section 5.0.

4.3 Qwest shall be in conformance with benchmark measurements when the monthly performance result equals or exceeds the benchmark, if a higher value means better performance, and when the monthly performance result equals or is less than the benchmark if a lower value means better performance.

The formula for determining parity using the modified z-test is:

$$Z = \text{DIFF} / \sigma_{\text{DIFF}}$$

Where:

$$\text{DIFF} = M_{\text{Qwest}} - M_{\text{CLEC}}$$

$$M_{\text{QWEST}} = \text{Qwest average or proportion}$$

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M_{CLEC} = CLEC average or proportion

σ_{DIFF} = square root $\sqrt{\sigma^2_{\text{Qwest}} (1/n_{\text{CLEC}} + 1/n_{\text{Qwest}})}$

σ_{Qwest} = calculated variance for Qwest

n_{Qwest} = number of observations or samples used in Qwest measurement

n_{CLEC} = number of observations or samples used in CLEC measurement

The modified z-tests will be applied to reported parity measurements that contain more than 30 data points.

In calculating the difference between Qwest and CLEC performance, the above formula applies when a larger Qwest value indicates a better level of performance. In cases where a smaller Qwest value indicates a higher level of performance, the order is reversed, i.e., $M_{\text{CLEC}} - M_{\text{QWEST}}$.

4.3.1 For parity measurements where the number of data points is 30 or less, Qwest will apply a permutation test to test for statistical significance. Permutation analysis will be applied to calculate the z-statistic using the following logic:

Calculate the modified z-statistic for the actual arrangement of the data

Pool and mix the CLEC and Qwest data sets

Perform the following 1000 times:

Randomly subdivide the pooled data sets into two pools, one the same size as the original CLEC data set (n_{CLEC}) and one reflecting the remaining data points, and one reflecting the remaining data points, (which is equal to the size of the original Qwest data set or n_{QWEST}).

Compute and store the modified¹ z-test score (Z_s) for this sample.

Count the number of times the z-statistic for a permutation of the data is greater than the actual modified² z- statistic

Compute the fraction of permutations for which the statistic for the rearranged data is greater than the statistic for the actual samples

If the fraction is greater than α , the significance level of the test, the hypothesis of no difference is not rejected, and the test is passed. The α shall be .05 when the critical z value is 1.645 and .15 when the critical z value is 1.04.

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5.0 Critical Z-Value

5.1 The following table shall be used to determine the critical z-value that is referred to in section 6.0. It is based on the monthly business volume of the CLEC for the particular performance measurements for which statistic testing is being performed.

TABLE 1: CRITICAL Z-VALUE

CLEC volume (Sample size)	LIS Trunks, UDITs, Resale, UBL-DS1 and DS- 3	All Other
1-10	1.04*	1.645
11-150	1.645	1.645
151-300	2.0	2.0
301-600	2.7	2.7
601-3000	3.7	3.7
3001 and above	4.3	4.3

* The 1.04 applies for individual month testing for performance measurements involving LIS trunks and DS-1 and DS-3 that are UDITs, Resale, or Unbundled Loops. The performance measurements are OP-3d/e, OP-4d/e, OP-5, OP-6-4/5, MR-5a/b, MR-7d/e, and MR-8.

For purposes of determining consecutive month misses, 1.645 shall be used. Where performance measurements disaggregate to zone 1 and zone 2, the zones shall be combined for purposes of statistical testing.

6.0 Tier 1 Payments to CLEC

6.1 Tier 1 payments to CLEC shall be made solely for the performance measurements designated as Tier 1 on Attachment 1. The payment amount for non-conforming service varies depending upon the designation of performance measurements as High, Medium, and Low and the duration of the non-conforming service condition as described below. Non-conforming service is defined in section 4.0.

6.1.1 Determination of Non-Conforming Measurements: The number of performance measurements that are determined to be non-conforming and, therefore, eligible for Tier 1 payments, are limited according to the critical z-value shown in Table 1, section 5.0. The critical z-values are the statistical standard that determines for each CLEC performance measurement whether Qwest has met parity. The critical z-value is selected from Table 1 according to the monthly CLEC volume for the performance measurement. For instance, if the CLEC sample size for that month is 100, the critical z-value is 1.645 for the statistical testing of that parity performance measurement.

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6.2 Determination of the Amount of Payment: Tier 1 payments to CLEC, except as provided for in sections 6.3 and 10.0, are calculated and paid monthly based on the number of performance measurements exceeding the critical z-value. Payments will be made on either a per occurrence or per measurement basis, depending upon the performance measurement, using the dollar amounts specified in Table 2 below. The dollar amounts vary depending upon whether the performance measurement is designated High, Medium, or Low and escalate depending upon the number of consecutive months for which Qwest has not met the standard for the particular measurement.

6.2.1 The escalation of payments for consecutive months of non-conforming service will be matched month for month with de-escalation of payments for every month of conforming service. For example, if Qwest has four consecutive monthly “misses” it will make payments that escalate from month 1 to month 4 as shown in Table 2. If, in the next month, service meets the standard, Qwest makes no payment. A payment “indicator” de-escalates down from month 4 to month 3. If Qwest misses the following month, it will make payment at the month 3 level of Table 2 because that is where the payment “indicator” presently sits. If Qwest misses again the following month, it will make payments that escalate back to the month 4 level. The payment level will de-escalate back to the original month 1 level only upon conforming service sufficient to move the payment “indicator” back to the month 1 level.

6.2.2 For those performance measurements listed on Attachment 2 as “Performance Measurements Subject to Per Measurement Caps,” payment to a CLEC in a single month shall not exceed the amount listed in Table 2 below for the “Per Measurement” category. For those performance measurements listed on Attachment 2 as “Performance Measurements Subject to Per Measurement Payments,” payment to a CLEC will be the amount set forth in Table 2 below under the section labeled “per measurement.”

TABLE 2: TIER-1 PAYMENTS TO CLEC

Per Occurrence						
Measurement Group	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6 and each following month
High	\$150	\$250	\$500	\$600	\$700	\$800
Medium	\$ 75	\$150	\$300	\$400	\$500	\$600
Low	\$ 25	\$ 50	\$100	\$200	\$300	\$400

Per Measurement Cap						
Measurement Group	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6 and each

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						following month
High	\$25,000	\$50,000	\$75,000	\$100,000	\$125,000	\$150,000
Medium	\$10,000	\$20,000	\$30,000	\$40,000	\$50,000	\$60,000
Low	\$5,000	\$10,000	\$15,000	\$20,000	\$25,000	\$30,000

6.3 For collocation, CP-2 and CP-4 performance measurements shall be relied upon for delineation of collocation business rules. For purposes of calculating Tier 1 payments, collocation jobs and collocation feasibility studies that are later than the due date will have a per day payment applied according to Table 3. The per-day payment will be applied to any collocation job in which the feasibility study is provided or the collocation installation is completed later than the scheduled date. The calculation of the payment amount will be performed by applying the per day payment amounts as specified in Table 3. Thus, for days 1 through 10, the payment is \$150 per day. For days 11 through 20, the payment is \$300 per day and so on.

TABLE 3: TIER-1 COLLOCATION PAYMENTS TO CLECS

Days Late	Completion Date	Feasibility Study
1 to 10 days	\$150/day	\$45/day
11 to 20 days	\$300/day	\$90/day
21 to 30 days	\$450/day	\$135/day
31 to 40 days	\$600/day	\$180/day
More than 40 days	\$1,000/day	\$300/day

6.4 A minimum payment calculation shall be performed at the end of each year for each CLEC with annual order volumes of no more than 1,200. The payment shall be calculated by multiplying \$2,000 by the number of months in which at least one payment was made to the CLEC. To the extent that the actual CLEC payment for the year is less than the product of the preceding calculation, Qwest shall make an additional payment equal to the difference.

7.0 Tier 2 Payments to the State

7.1 Payments to the State shall be limited to the performance measurements designated in section 7.4 for Tier 2 per measurement payments and in Attachment 1 for per occurrence payments and which have at least 10 data points each month for the period payments are being calculated. Similar to the Tier 1 structure, Tier 2 measurements are categorized as High, Medium, and Low and the amount of payments for non-conformance varies according to this categorization.

7.2 **Determination of Non-Conforming Measurements:** The determination of non-conformance will be based upon the aggregate of all CLEC data for each Tier 2

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performance measurement. Non-conforming service is defined in section 4.2 (for parity measurements) and 4.3 (for benchmark measurements), except that a 1.645 critical z-value shall be used for all parity measurements but MR-2 and OP-2. The critical z-value is the statistical standard that determines for each performance measurement whether Qwest has met parity.

7.3 Determination of the Amount of Payment: Except as provided in section 7.4, Tier 2 payments are calculated and paid monthly based on the number of performance measurements for. If in any 12-month rolling period in which there have been two non-compliant months out of any three consecutive months, Tier 2 payments shall be triggered by an additional single month of non-compliance during such rolling period. Payments shall drop to zero when there has been a 12-month period without two consecutive months of non-compliance. Payment will be made on either a per occurrence or per measurement basis, whichever is applicable to the performance measurement, using the dollar amounts specified in Table 4 or Table 5 below. Except as provided in section 7.4, the dollar amounts vary depending upon whether the performance measurement is designated High, Medium, or Low.

7.3.1 For those Tier 2 measurements listed on Attachment 2 as "Performance Measurements Subject to Per Measurement Caps," payment to the State in a single month shall not exceed the amount listed in Table 4 for the "Per Measurement" category.

TABLE 4: TIER-2 PAYMENTS TO STATE FUNDS

Per Occurrence

Measurement Group	
High	\$500
Medium	\$300
Low	\$200

Per Measurement/Cap

Measurement Group	
High	\$75,000
Medium	\$30,000
Low	\$20,000

7.4 Performance Measurements Subject to Per Measurement Payment: The following Tier 2 performance measurements shall have their performance results measured on a region-wide (14 state) basis. Failure to meet the performance standard, therefore, will result in a per measurement payment in each of the Qwest in-region 14 states adopting this PAP. The performance measurements are:

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GA-1: Gateway Availability - IMA-GUI
 GA-2: Gateway Availability - IMA-EDI
 GA-3: Gateway Availability – EB-TA
 GA-4: System Availability – EXACT
 GA-6: Gateway Availability – GUI-Repair
 PO-1: Pre-Order/Order Response Times
 OP-2: Call Answered within Twenty Seconds – Interconnect Provisioning Center
 MR-2: Calls Answered within Twenty Seconds – Interconnect Repair Center
 PO-20: Manual Service Order Accuracy

GA-1 has three sub-measurements: GA-1A, GA-1B, and GA-1C. PO-1 shall have two sub-measurements: PO-1A and PO-1B. PO-1A and PO-1B shall have their transaction types aggregated together. PO-20 shall have two product disaggregations – Resale POTS / UNE-P (POTS) and Unbundled Loops (Analog and Non-Loaded 2-Wire).

For these measurements, Qwest will make a Tier 2 payment based upon monthly performance results according to Table 5: Tier 2 Per Measurement Payments to State Funds.

TABLE 5: TIER-2 PER MEASUREMENT PAYMENTS TO STATE FUNDS

Measurement	Performance	State Payment	14 State Payment
GA-1,2,3,4,6	1% or lower	\$1,000	\$14,000
	>1% to 3%	\$10,000	\$140,000
	>3% to 5%	\$20,000	\$280,000
	>5%	\$30,000	\$420,000
PO-1	2 sec. Or less	\$1,000	\$14,000
	>2 sec. to 5 sec.	\$5,000	\$70,000
	>5 sec. to 10 sec.	\$10,000	\$140,000
	>10 sec.	\$15,000	\$210,000
OP-2/MR-2	1% or lower	\$1,000	\$14,000
	>1% to 3%	\$5,000	\$70,000
	>3% to 5%	\$10,000	\$140,000
	>5%	\$15,000	\$210,000
PO-20			
- Resale POTS /	1% or lower	\$500	\$7,000
UNE-P (POTS)	>1% to 3%	\$2,500	\$35,000

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	>3% to 5%	\$5,000	\$70,000
	>5%	\$7,500	\$105,000
- Unbundled Loops	1% or lower	\$500	\$7,000
(Analog and 2-Wire	>1% to 3%	\$2,500	\$35,000
Non-Loaded)	>3% to 5%	\$5,000	\$70,000
	>5%	\$7,500	\$105,000

7.5 Payment of Tier 2 Funds: Tier 2 payments shall be made to the Connecting Oregon Communities Fund pursuant to Oregon Revised Statutes 759.445(1) or as may be otherwise provided under state law.

8.0 Step by Step Calculation of Monthly Tier 1 Payments to CLEC

8.1 Application of the Critical Z-Values: Qwest shall identify the Tier 1 parity performance measurements that measure the service provided to CLEC by Qwest for the month in question and the critical z-value from Table 1 in section 5.0 that shall be used for purposes of statistical testing for each particular performance measurement. The statistical testing procedures described in section 4.0 shall be applied. For the purpose of determining the critical z-values, each disaggregated category of a performance measurement is treated as a separate sub-measurement. The critical z-value to be applied is determined by the CLEC volume at each level of disaggregation or sub-measurement.

8.2 Performance Measurements for which Tier 1 Payment is Per Occurrence:

8.2.1 Performance Measurements that are Averages or Means:

8.2.1.1 Step 1: For each performance measurement, the average or the mean that would yield the critical z-value shall be calculated. The same denominator as the one used in calculating the z-statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

8.2.1.2 Step 2: The percentage differences between the actual averages and the calculated averages shall be calculated. The calculation is $\% \text{ diff} = (\text{CLEC result} - \text{Calculated Value}) / \text{Calculated Value}$. The percent difference shall be capped at a maximum of 100%. In all calculations of percent differences in sections 8.0 and 9.0, the calculated percent differences is capped at 100%.

8.2.1.3 Step 3: For each performance measurement, the total number of data points shall be multiplied by the percentage calculated in the previous step and the per occurrence dollar amounts from the Tier 1 Payment Table shall determine the payment to the CLEC for each non-conforming performance measurement.

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8.2.2 Performance Measurements that are Percentages:

8.2.2.1 Step 1: For each performance measurement, the percentage that would yield the critical z-value shall be calculated. The same denominator as the one used in calculating the z- statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

8.2.2.2 Step 2: The difference between the actual percentages for the CLEC and the calculated percentages shall be determined.

8.2.2.3 Step 3: For each performance measurement, the total number of data points shall be multiplied by the difference in percentage calculated in the previous step, and the per occurrence dollar amount taken from the Tier 1 Payment Table, to determine the payment to the CLEC for each non-conforming performance measurement.

8.2.3 Performance Measurements that are Ratios or Proportions:

8.2.3.1 Step 1: For each performance measurement the ratio that would yield the critical z-value shall be calculated. The same denominator as the one used in calculating the z-statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

8.2.3.2 Step 2: The absolute difference between the actual rate for the CLEC and the calculated rate shall be determined.

8.2.3.3 Step 3: For each performance measurement, the total number of data points shall be multiplied by the difference calculated in the previous step, and the per occurrence dollar amount taken from the Tier 1 Payment Table, to determine the payment to the CLEC for each non-conforming performance measurement.

8.3 Performance Measurements for which Tier 1 Payment is Per Measure:

8.3.1 For each performance measurement where Qwest fails to meet the standard, the payment to the CLEC shall be the dollar amount shown on the "per measure" portion of Table 2: Tier 1 Payments to CLEC.

9.0 Step by Step Calculation of Monthly Tier 2 Payments to State Funds

9.1.1 Application of the Critical Z-Value: Qwest shall identify the Tier 2 parity performance measurements that measure the service provided by Qwest to all CLECs for the month in question shall be determined. The statistical testing

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procedures described in section 4.0 shall be applied, except that a 1.645 critical z-value shall be used for all parity measurements but MR-2 and OP-2.

9.1.2 To determine if Tier 2 payments for performance measurements listed on Attachment 1 shall be made in the current month, the following shall be determined: (1) If in any 12-month rolling period in which there have been two non-compliant months out of any three consecutive months, Tier 2 payments shall be triggered by an additional single month of non-compliance during such rolling period. (2) Payments shall drop to zero when there has been a 12-month period without two consecutive months of non-compliance.

9.2 Performance Measurements for which Tier 2 Payment is Per Occurrence:

9.2.1 Performance Measurements that are Averages or Means:

9.2.1.1 Step 1: The monthly average or the mean for each performance measurement that would yield the critical z-value shall be calculated. The same denominator as the one used in calculating the z-statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

9.2.2.2 Step 2: The percentage difference between the actual averages and the calculated averages shall be calculated. The calculation for parity measurements is $\% \text{ diff} = (\text{actual average} - \text{calculated average}) / \text{calculated average}$. The percent difference shall be capped at a maximum of 100%. In all calculations of percent differences in section 8.0 and section 9.0, the calculated percent difference is capped at 100%.

9.2.2.3 Step 3: For each performance measurement, the total number of data points each month shall be multiplied by the percentage calculated in the previous step. The result (shall be calculated and rounded to the nearest integer) is then multiplied by the result of the per occurrence dollar amount taken from the Tier 2 Payment Table to determine the payment to the State for each non-conforming performance measurement.

9.3 Performance Measurements that are Percentages:

9.3.1 Step 1: For each performance measurement, the monthly percentage that would yield the critical z-value shall be calculated. The same denominator as the one used in calculating the z-statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

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9.3.1.2 Step 2: The difference between the actual percentages and the calculated percentages ³shall be calculated. The calculation for parity measurement is $\text{diff} = (\text{CLEC result} - \text{calculated percentage})$. This formula shall be applicable where a high value is indicative of poor performance. The formula shall be reversed where high performance is indicative of good performance.

9.3.1.3 Step 3: For each performance measurement, the total number of data points for each month shall be multiplied by the difference in percentage calculated in the previous step. The result (shall be calculated and rounded to the nearest integer) is then multiplied by the result of the per occurrence dollar amounts taken from the Tier 2 Payment Table to determine the payment to the State.

9.4 Performance Measurements that are Ratios or Proportions:

9.4.1 Step 1: For each performance measurement, the ratio that would yield the critical z-value shall be calculated. The same denominator as the one used in calculating the z-statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

9.4.1.1 Step 2: The difference between the actual rate for the CLEC and the calculated rate shall be calculated. The calculation is: $\text{diff} = (\text{CLEC rate} - \text{calculated rate})$. This formula shall apply where a high value is indicative of poor performance. The formula shall be reversed where high performance is indicative of good performance.

9.4.1.2 Step 3: For each performance measurement, the total number of data points shall be multiplied by the difference calculated in the previous step. The result (shall be calculated and rounded to the nearest integer) is then multiplied by the result of the per occurrence dollar amounts taken from the Tier 2 Payment Table to determine the payment to the State.

9.5 Performance Measurements for which Tier 2 Payment is Per Measure:

9.5.1 For each performance measurement where Qwest fails to meet the standard, the payment to the State Fund shall be the dollar amount shown on the “per measure” portion of the Tier 2 Payment Table.

10.0 Low Volume, Developing Markets

10.1 For certain qualifying performance standards, if the aggregate monthly volumes of CLECs participating in the PAP are more than 10, but less than 100, Qwest will make Tier 1 payments to CLECs for failure to meet the parity or

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benchmark standard for the qualifying performance sub-measurements. The qualifying sub-measurements are the UNE-P (POTS), megabit resale, and ADSL qualified loop product disaggregation of OP-3, OP-4, OP-5, MR-3, MR-5, MR-7, and MR-8. If the aggregate monthly CLEC volume is greater than 100, the provisions of this section shall not apply to the qualifying performance sub-measurement.

10.2 The determination of whether Qwest has met the parity or benchmark standards will be made using aggregate volumes of CLECs participating in the PAP. In the event Qwest does not meet the applicable performance standards, a total payment to affected CLECs will be determined in accordance with the high, medium, low designation for each performance measurement (see Attachment 1) and as described in section 8.0, except that CLEC aggregate volumes will be used. In the event the calculated total payment amount to CLECs is less than \$5,000, a minimum payment of \$5,000 shall be made. The resulting total payment amount to CLECs will be apportioned to the affected CLECs based upon each CLEC's relative share of the number of total service misses.

10.3 At the six (6)-month reviews, Qwest will consider adding to the above list of qualifying performance sub-measurements, new products disaggregation representing new modes of CLEC entry into developing markets.

11.0 Payment

11.1 Payments to CLEC or the State shall be made one month following the due date of the performance measurement report for the month for which payment is being made. Qwest will pay interest on any late payment and underpayment at the prime rate as reported in the Wall Street Journal. On any overpayment, Qwest is allowed to offset future payments by the amount of the overpayment plus interest at the prime rate.

11.2 Payment to CLEC shall be made via bill credits. To the extent that a monthly payment owed to CLEC under this PAP exceeds the amount owed to Qwest by CLEC on a monthly bill, Qwest will issue a check or wire transfer to CLEC in the amount of the overage. Payment to the State shall be made via check or wire transfer.

12.0 Cap on Tier 1 and Tier 2 Payments

12.1 There shall be a cap on the total payments made by Qwest for a 12 month period beginning with the effective date of the PAP for the State of Oregon. The annual cap for the State of Oregon shall be \$48,000,000 (36% of the 1999 ARMIS Net Return), subject to any applicable adjustment permitted pursuant to section 12.2. CLEC agrees that this amount constitutes a maximum annual cap that shall apply to the aggregate total of Tier 1 liquidated damages, including any such damages paid pursuant to this Agreement, any other interconnection agreement, or any other

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payments made for the same underlying activity or omission under any other contract, order or rule and Tier 2 assessments or payments made by Qwest for the same underlying activity or omission under another contract, order or rule.

12.2 The 36% annual cap may be increased to 44% or decreased to 30% of 1999 ARMIS Net Return as follows:

12.2.1 An increase in the cap of a maximum of 4 percentage points at any one time (i.e., first to 40 percent) shall occur upon order by the Commission if the cap has been exceeded for any consecutive period of 24 months by that same 4 percent or more, provided that: (a) the Commission has determined that the preponderance of the evidence shows Qwest could have remained beneath the cap through reasonable and prudent effort, and (b) the Commission has made that determination after having available to it on the record the results of audits and root cause analyses, and provided an opportunity for Qwest to be heard.

12.2.2 A decrease in the cap of a maximum of 4 percentage points at any one time shall occur upon order by the Commission after performance for any consecutive period of 24 months in which total payments are 8 or more percentage points below the cap amount, provided that: (a) the Commission has determined that the preponderance of the evidence shows the performance results underlying those payments results from an adequate Qwest commitment to meeting its responsibilities to provide adequate wholesale service and to keeping open its local markets and (b) the Commission shall have made that determination after providing all interested parties an opportunity to be heard.

12.2.3 The provisions of 12.2.1 and 12.2.2 shall be in effect for the next 24 month period commencing with the end of the 24 month period upon which the Commission's order is based.

12.3 If the annual cap is reached, each CLEC shall, as of the end of the year, be entitled to receive the same percentage of its total calculated Tier 1 payments. In order to preserve the operation of the annual cap, the percentage equalization shall take place as follows:

12.3.1 The amount by which any month's total year-to-date Tier 1 and Tier 2 payments exceeds the cumulative monthly cap (defined as $1/12^{\text{th}}$ of the annual cap times the cumulative number of months to date) shall be calculated and apportioned between Tier 1 and Tier 2 according to the percentage that each bore of total payments for the year-to-date. The Tier 1 apportionment resulting of this calculation shall be known as the "Tracking Account."

12.3.2 The Tier 1 apportionment shall be debited against the monthly payment due to each CLEC, by applying to the year-to-date payments

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received by each the percentage necessary to generate the required total Tier 1 amount.

12.3.3 The Tracking Amount shall be apportioned among all CLECs so as to provide each with payments equal in percentage of its total year to date Tier 1 payment calculations.

12.3.4 This calculation shall take place in the first month that the year-to-date total Tier 1 and Tier 2 payments are expected to exceed the cumulative monthly cap and for each month of that year thereafter. Qwest shall recover any debited amounts by reducing payments due from any CLEC for that and any succeeding months, as necessary.

13.0 Limitations

13.1 The PAP shall not become available in the State unless and until Qwest receives effective section 271 authority from the FCC for that State.

13.2 Qwest will not be liable for Tier 1 payments to CLEC in an FCC approved state until the Commission has approved an interconnection agreement between CLEC and Qwest which adopts the provisions of this PAP.

13.3 Qwest shall not be obligated to make Tier 1 or Tier 2 payments for any measurement if and to the extent that non-conformance for that measurement was the result of any of the following: 1) a Force Majeure event, including but not limited to acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers; 2) an act or omission by a CLEC that is contrary to any of its obligations under its interconnection agreement with Qwest or under federal or state law; an act or omission by CLEC that is in bad faith. Examples of bad faith conduct include, but are not limited to: unreasonably holding service orders and/or applications, "dumping" orders or applications in unreasonably large batches, "dumping" orders or applications at or near the close of a business day, on a Friday evening or prior to a holiday, and failing to provide timely forecasts to Qwest for services or facilities when such forecasts are required to reasonably provide services or facilities; or 3) problems associated with third-party systems or equipment, which could not have been avoided by Qwest in the exercise of reasonable diligence, *provided, however*, that this third party exclusion will not be raised in the State more than three times within a calendar year.

13.3.1 Qwest will not be excused from Tier 1 or Tier 2 payments for any reason except as described in Section 13.0. Qwest will have the burden of

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demonstrating that its non-conformance with the performance measurement was excused on one of the grounds described in this PAP.

13.4 Qwest's agreement to implement these enforcement terms, and specifically its agreement to pay any "liquidated damages" or "assessments" hereunder, will not be considered as an admission against interest or an admission of liability in any legal, regulatory, or other proceeding relating in whole or in part to the same performance.

13.4.1 CLEC may not use: 1) the existence of this enforcement plan; or 2) Qwest's payment of Tier -1 "liquidated damages" or Tier 2 "assessments" as evidence that Qwest has discriminated in the provision of any facilities or services under Sections 251 or 252, or has violated any state or federal law or regulation. Qwest's conduct underlying its performance measures, however are not made inadmissible by its terms.

13.4.2 By accepting this performance remedy plan, CLEC agrees that Qwest's performance with respect to this remedy plan may not be used as an admission of liability or culpability for a violation of any state or federal law or regulation. (Nothing herein is intended to preclude Qwest from introducing evidence of any Tier 1 "liquidated damages" under these provisions for the purpose of offsetting the payment against any other damages or payments a CLEC might recover.) The terms of this paragraph do not apply to any proceeding before the Commission or the FCC to determine whether Qwest has met or continues to meet the requirements of section 271 of the Act.

13.5 By incorporating these liquidated damages terms into the PAP, Qwest and CLEC accepting this PAP agree that proof of damages from any non-conforming performance measurement would be difficult to ascertain and, therefore, liquidated damages are a reasonable approximation of any contractual damages that may result from a non-conforming performance measurement. Qwest and CLEC further agree that Tier 1 payments made pursuant to this PAP are not intended to be a penalty. The application of the assessments and damages provided for herein is not intended to foreclose other noncontractual legal and non-contractual regulatory claims and remedies that may be available to a CLEC.

13.6 This PAP contains a comprehensive set of performance measurements, statistical methodologies, and payment mechanisms that are designed to function together, and only together, as an integrated whole. To elect the PAP, CLEC must adopt the PAP in its entirety, in its interconnection agreement with Qwest in lieu of other alternative standards or relief for the same wholesale services governed by the QPAP. Where alternative standards or remedies for Qwest wholesale services governed by the QPAP are available under rules, orders, or contracts, including interconnection agreements, CLEC will be limited to either PAP standards and remedies or the standards and remedies available under rules, orders, or contracts and CLECs choice of remedies shall be specified in its interconnection agreement.

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13.7 Any liquidated damages payment by Qwest under these provisions is not hereby made inadmissible in any proceeding related to the same conduct where Qwest seeks to offset the payments against any other damages a CLEC may recover; whether or not the nature of the damages sought by the CLEC is such that an offset is appropriate will be determined in the relevant proceeding.

13.8 Qwest shall not be liable for both Tier 2 payments under the PAP and assessments, sanctions, or other payments for the same underlying activity or omission pursuant to any Commission order or service quality rules.

13.9 Whenever a Qwest Tier 1 payment to an individual CLEC exceeds \$3 million in a month, Qwest may commence a proceeding to demonstrate why it should not be required to pay any amount in excess of the \$3 million. Upon timely commencement of the proceeding, Qwest must pay the balance of payments owed in excess of \$3 million into escrow, to be held by a third-party pending the outcome of the proceeding. To invoke these escrow provisions, Qwest must file, not later than the due date of the Tier 1 payments, its application. Qwest will have the burden of proof to demonstrate why, under the circumstances, it would be unjust to require it to make the payments in excess of \$3 million. If Qwest reports non-conforming performance to CLEC for three consecutive months on 20% or more of the measurements reported to CLEC and has incurred no more than \$1 million in liability to CLEC, then CLEC may commence a similar proceeding. In any such proceeding CLEC will have the burden of proof to demonstrate why, under the circumstances, justice requires Qwest to make payments in excess of the amount calculated pursuant to the terms of the PAP. The disputes identified in this section shall be resolved in a manner specified in the Dispute Resolution section of the SGAT or interconnection agreement with the CLEC.

14.0 Reporting

14.1 Upon receiving effective section 271 authority from the FCC for a state, Qwest will provide CLEC that has an approved interconnection agreement with Qwest, a monthly report of Qwest's performance for the measurements identified in the PAP by the last day of the month following the month for which performance results are being reported. However, Qwest shall have a grace period of five business days, so that Qwest shall not be deemed out of compliance with its reporting obligations before the expiration of the five business day grace period. Qwest will collect, analyze, and report performance data for the measurements listed on Attachment 1 in accordance with the most recent version of the PIDs. Upon CLEC's request, data files of the CLEC's raw data, or any subset thereof, will be transmitted, without charge, to CLEC in a mutually acceptable format, protocol, and transmission medium.

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14.2 Qwest will also provide the Commission a monthly report of aggregate CLEC performance results pursuant to the PAP by the last day of the month following the month for which performance results are being reported. However, Qwest shall have a grace period of five business days, so that Qwest shall not be deemed out of compliance with its reporting obligations before the expiration of the five business day grace period. Solely upon the specific order of the Commission, data files of participating CLEC raw data, or any subset thereof, will be transmitted, without charge, to the Commission in a mutually acceptable format, protocol, and transmission form, provided that Qwest shall first initiate any procedures necessary to protect the confidentiality and to prevent the public release of the information pending any applicable Commission procedures. Qwest shall provide such notice as the Commission directs to the CLEC involved. By accepting this PAP, CLEC consents to Qwest providing CLEC's report and raw data to the Commission.

14.3 In the event Qwest does not provide CLEC and the Commission with a monthly report by the last day of the month following the month for which performance results are being reported, Qwest will pay to the State a total of \$500 for each business day for which performance reports are 6 to 10 business days past the due date; \$1,000 for each business day for which performance reports are 11 to 15 business days past the due date; and \$2,000 for each business day for which performance results are more than 15 business days past the due date. If reports are on time but are missing performance results, Qwest will pay to the State a total of one-fifth of the late report amount for each missing performance measurement, subject to a cap of the full late report amount. These amounts represent the total payments for omitting performance measurements or missing any report deadlines, rather than a payment per report. Prior to the date of a payment for late reports, Qwest may file a request for a waiver of the payment, which states the reasons for the waiver. The Commission may grant the waiver, deny the waiver, or provide any other relief that may be appropriate.

14.4 To the extent that Qwest recalculates payments made under this PAP, such recalculation shall be limited to the preceding three years (measured from the later of the provision of a monthly credit statement or payment due date). Qwest shall retain sufficient records to demonstrate fully the basis for its calculations for long enough to meet this potential recalculation obligation. CLEC verification or recalculation efforts should be made reasonably contemporaneously with Qwest measurements. In any event, Qwest shall maintain the records in a readily useable form for one year. For the remaining two years, the records may be retained in archived format. Any payment adjustments shall be subject to the interest rate provisions of section 11.1.

15.0 Integrated Audit Program/Investigations of Performance Results

15.1 Audits of the PAP shall be conducted in a two-year cycle under the auspices of the participating Commissions in accordance with a detailed audit plan developed

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by an independent auditor retained for a two-year period. The participating Commissions shall select the independent auditor with input from Qwest and CLECs.

15.1.1 The participating Commissions shall form an oversight committee of Commissioners who will choose the independent auditor and approve the audit plan. Any disputes as to the choice of auditor or the scope of the audit shall be resolved through a vote of the chairs of the participating commissions pursuant to Section 15.1.4.

15.1.2 The audit plan shall be conducted over two years. The audit plan will identify the specific performance measurements to be audited, the specific tests to be conducted, and the entity to conduct them. The audit plan will give priority to auditing the higher risk areas identified in the OSS report. The two-year cycle will examine risks likely to exist across that period and the past history of testing, in order to determine what combination of high and more moderate areas of risk should be examined during the two-year cycle. The first year of a two-year cycle will concentrate on areas most likely to require follow-up in the second year.

15.1.3 The audit plan shall be coordinated with other audit plans that may be conducted by other state commissions so as to avoid duplication, shall not impede Qwest's ability to comply with the other provisions of the PAP and should be of a nature and scope that can be conducted in accordance with the reasonable course of Qwest's business operations.

15.1.4 Any dispute arising out of the audit plan, the conduct of the audit, or audit results shall be resolved by the oversight committee of Commissioners. Decisions of the oversight committee of Commissioners may be appealed to a committee of the chairs of the participating Commissions.

15.2 Qwest may make management processes more accurate or more efficient to perform without sacrificing accuracy. These changes are at Qwest's discretion but will be reported to the independent auditor in quarterly meetings in which the auditor may ask questions about changes made in the Qwest measurement regimen. The meetings, which will be limited to Qwest and the independent auditor, will permit an independent assessment of the materiality and propriety of any Qwest changes, including, where necessary, testing of the change details by the independent auditor. The information gathered by the independent auditor may be the basis for reports by the independent auditor to the participating Commissions and, where the commissions deem it appropriate, to other participants.

15.3 In the event of a disagreement between Qwest and CLEC as to any issue regarding the accuracy or integrity of data collected, generated, and reported pursuant to the PAP, Qwest and the CLEC shall first consult with one another and attempt in good faith to resolve the issue. If an issue is not resolved within 45 days after a request for consultation, CLEC and Qwest may, upon a demonstration of good

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cause, (e.g., evidence of material errors or discrepancies) request an independent audit to be conducted, at the initiating party's expense. The independent auditor will assess the need for an audit based upon whether there exists a material deficiency in the data or whether there exists an issue not otherwise addressed by the audit plan for the current cycle. The dispute resolution provision of section 18.0 is available to any party questioning the independent auditor's decision to conduct or not conduct a CLEC requested audit and the audit findings, should such an audit be conducted. An audit may not proceed until dispute resolution is completed. Audit findings will include: (a) general applicability of findings and conclusions (i.e., relevance to CLECs or jurisdictions other than the ones causing test initiation), (b) magnitude of any payment adjustments required and, (c) whether cost responsibility should be shifted based upon the materiality and clarity of any Qwest non-conformance with measurement requirements (no pre-determined variance is appropriate, but should be based on the auditor's professional judgment). CLEC may not request an audit of data more than three years from the later of the provision of a monthly credit statement or payment due date.

15.4 Qwest shall fund the state of Oregon's share of the costs of the first two-year audit cycle.

15.5 Qwest will investigate any second consecutive Tier 2 miss to determine the cause of the miss and to identify the action needed in order to meet the standard set forth in the performance measurements. To the extent an investigation determines that a CLEC was responsible in whole or in part for the Tier 2 misses, Qwest shall receive credit against future Tier 2 payments in an amount equal to the Tier 2 payments that should not have been made. The relevant portion of subsequent Tier 2 payments will not be owed until any responsible CLEC problems are corrected. For the purposes of this sub-section, Tier 1 performance measurements that have not been designated as Tier 2 will be aggregated and the aggregate results will be investigated pursuant to the terms of this Agreement.

16.0 Reviews

16.1 Every six (6) months, beginning six months after the effective date of the first Section 271 approval by the FCC of one of the states that participated in the multi-state QPAP Section 271 proceeding, Qwest, CLECs, and the Commissions of those states shall participate in a common review of the performance measurements to determine whether measurements should be added, deleted, or modified; whether the applicable benchmark standards should be modified or replaced by parity standards; and whether to move a classification of a measurement to High, Medium, or Low or Tier 1 to Tier 2. The criterion for reclassification of a measurement shall be whether the actual volume of data points was less or greater than anticipated. Criteria for review of performance measurements, other than for possible reclassification, shall be whether there exists an omission or failure to capture intended performance, and whether there is duplication of another measurement.

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The first six-month period will begin upon the FCC's approval of Qwest's 271 application for that particular state. Changes shall not be made without Qwest's agreement, except that disputes as to whether new performance measurements should be added shall be resolved by one arbitration proceeding conducted pursuant to section 5.18.3 of the SGAT, which shall bind CLEC and Qwest and all parties to the arbitration and determine what new measures, if any, should be included in Exhibit K to the SGAT.

16.2 Two years after the effective date of the first FCC 271 approval of the PAP, the participating Commissions may conduct a joint review by a independent third party to examine the continuing effectiveness of the PAP as a means of inducing compliant performance. This review shall not be used to open the PAP generally to amendment, but would serve to assist Commissions in determining existing conditions and reporting to the FCC on the continuing adequacy of the PAP to serve its intended functions.

16.3 Qwest will make the PAP available for CLEC interconnection agreements until such time as Qwest eliminates its Section 272 affiliate. At that time, the Commission and Qwest shall review the appropriateness of the PAP and whether its continuation is necessary. However, in the event Qwest exits the interLATA market, that State PAP shall be rescinded immediately.

17.0 Voluntary Performance Assurance Plan

This PAP represents Qwest's voluntary offer to provide performance assurance. Nothing in the PAP or in any conclusion of non-conformance of Qwest's service performance with the standards defined in the PAP shall be construed to be, of itself, non-conformance with the Act.

18.0 Dispute Resolution

For the purpose of resolving disputes over the meaning of the provisions of the PAP and how they should be applied, the dispute resolution provisions of the SGAT, section 5.18, shall apply whether the CLEC uses the SGAT in its entirety or elects to make the PAP part of its interconnection agreements (i.e., the unique dispute resolution provisions of interconnection agreements should not apply).

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Attachment 1: Tier 1 and Tier 2 Performance Measurements Subject to Per Occurrence Payment

Performance Measurement		Tier 1 Payments			Tier 2 Payments		
		Low	Med	High	Low	Med	High
GATEWAY							
Timely Outage Resolution	GA-7						X
PRE-ORDER/ORDERS							
LSR Rejection Notice Interval	PO-3 ^a	X					
Firm Order Confirmations On Time	PO-5	X				X	
Work Completion Notification Timeliness	PO-6 ^b	X					
Billing Completion Notification Timeliness	PO-7 ^b	X					
Jeopardy Notice Interval	PO-8	X					
Timely Jeopardy Notices	PO-9	X					
Release Notifications	PO-16						X
ORDERING AND PROVISIONING							
Installation Commitments Met	OP-3 ^c			X		X	
Installation Intervals	OP-4 ^d			X		X	
New Service Installation Quality	OP-5			X		X	
Delayed Days	OP-6 ^e			X		X	
Number Portability Timeliness	OP-8			X		X	
Coordinated Cuts On Time – Unbundled Loops	OP-13a			X		X	
LNP Disconnect Timeliness	OP-17			X		X	
MAINTENANCE AND REPAIR							
Out of Service Cleared within 24 hours	MR-3			X			
All Troubles Cleared within 4 hours	MR-5			X			
Mean time to Restore	MR-6a,b,c			X			
Repair Repeat Report Rate	MR-7			X		X	
Trouble Rate	MR-8			X		X	
LNP Trouble Reports Cleared within 24 Hours	MR-11			X		X	
LNP Trouble Reports—Mean Time to Restore	MR-12			X		X	
BILLING							
Time to Provide Recorded Usage Records	BI-1	X					X
Billing Accuracy-Adjustments for Errors	BI-3	X					
Billing Completeness	BI-4	X				X	
NETWORK PERFORMANCE							
Trunk Blocking	NI-1			X			X
NXX Code Activation	NP-1			X			X

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a. PO-3 is limited to PO-3a-1, PO-3b-1, and PO-3c.

b. PO-6 is included with PO-7 as two "families:" PO-6a/PO-7a and PO-6b/PO-7b. Measurements within each family share a single payment opportunity with only the measurements with the highest payment being paid.

c.. OP-4 is included with OP-6 as five "families:" OP-4a/OP-6-1, OP-4b/OP-6-2, OP-4c/OP-6-3, OP-4d/OP-6-4, and OP-4e/OP-6-5. Measurements within each family share a single payment opportunity with only the measurement with the highest payment being paid.

d. For purposes of the PAP, OP-6a and OP-6b will be combined and treated as one. The combined OP-6 breaks down to OP-6-1 (within MSA), OP-6-2 (outside MSA), OP-6-3 (no dispatch), OP-6-4 (zone 1), and OP-6-5 (zone 2).

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Attachment 2: Performance Measurements Subject to Per Measurement Caps

Billing

Time to Provide Recorded Usage Records – BI-1 (Tier 1/Tier 2)
Billing Accuracy – Adjustments for Errors – BI-3 (Tier 1)
Billing Completeness – BI-4 (Tier 1/Tier 2)

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